shares of the par value of $100.00 each. It issued bonds pursuant to the Act of Congress in excess of $42,000,000.00. Its assets were invested in farm mortgages. In 1932 the Federal Farm Loan Board declared the Bank to be insolvent and placed its assets in the hands of a receiver for liquidation.

Shortly after the receivership the present respondents filed their bill in behalf of themselves and all other creditors in the United States District Court in Chicago (hereafter called the *Chicago* Case) to enforce the stockholders' liability. The bill was filed pursuant to *Wheeler* v. *Greene*, 280 U. S. 49, which denied the right of the statutory receiver to enforce the liability and held that such liability was enforceable only by a bill in equity filed by the creditors of the Bank. In the *Chicago* Case the complainants acted in accordance with the procedure indicated in the so-called *Conway* Cases (*infra* p. 3). In these cases creditors of a Kentucky bank sued in the then U. S. Circuit Court in Kentucky to enforce the stockholders' liability created by a Kentucky statute. The Kentucky statute, like that involved here, made stockholders in a bank liable for the debts of such bank to the extent of the par value of their stock. The action was in equity and numerous stockholders were joined as defendants. Some of the stockholders were liable for more than $2,000.00; others for less, so that the questions presented were identical with those later arising in the *Chicago* Case, namely, whether there was jurisdiction in equity, whether the stockholders could be joined in a single suit, and whether the court had jurisdiction over a stockholder who alone was liable for less than the jurisdictional amount. All of these questions were answered in the affirmative both by the District Court and the Circuit Court of Appeals, and the Supreme Court denied certiorari. The courts held that the suit was properly brought in equity, that the amount of the fund to be collected determined the juris-

dictional amount and that an equity receiver was necessary to collect, administer and distribute the fund to the creditors.

Conway v. *Owensboro,* 165 Fed. 822.
Conway v. *Owensboro,* 185 Fed. 950.
Alsop v. *Conway,* 188 Fed. 568.
Robertson v. *Conway,* 188 Fed. 579.
Alsop v. *Conway,* 223 U. S. 720 (certiorari denied).

In the *Chicago* Case the Chicago Joint Stock Land Bank and all of the stockholders, exceeding one thousand in number, were named as defendants. Those residing in Illinois, over three hundred in number, were served. Over two hundred of these defendants answered and the cause was referred to a Master. (R. 28-29.) The Master found that the Bank was insolvent and that its liabilities exceeded its assets to the extent of $12,000,000.00. The Master recommended an assessment of 100 per cent against all stockholders. The Court approved the Master's report and entered a decree (hereafter called Chicago decree), assessing all stockholders 100 per cent of the par value of their shares, but rendered judgment only against those who had been served. (R. 4-5.)

The defendants appealed and the decree of the District Court was affirmed. *Brusselback, et al.* v. *Chicago Joint Stock Land Bank, et al.,* 85 Fed. (2nd) 617. (This decision hereafter referred to as *Brusselback* v. *Bank.*) This court denied certiorari January 11, 1937. (299 U. S. 615.)

The stockholders of the Bank are residents of many states. The Chicago decree fixed the assessment as to all, but gave judgment only against those served in Illinois. The District Court in Chicago, having previously appointed an equity receiver, the decree empowered such receiver to collect, administer and distribute the fund collected. The Chicago decree also authorized the receiver to collect from

foreign stockholders and to give acquittance to those making payment. (R. 39, f. 43.) This merely gave the Chicago receiver the right to receive payments voluntarily made by foreign stockholders. The decree did not authorize the Chicago receiver to sue in foreign jurisdictions and no such provision, in the absence of an Enabling Statute, would have been valid. *Hale* v. *Allinson,* 188 U. S. 56.

As the stockholders of the Bank were residents of many states, the question immediately arose, upon the entry of the Chicago decree, as to how collections should be enforced against those outside of Illinois. *Hale* v. *Allinson,* 188 U. S. 56, had decided that an action could not be brought against foreign stockholders by an equity receiver outside of the jurisdiction of his appointment, nor could the *statutory receiver* proceed by reason of *Wheeler* v. *Greene,* 280 U. S. 49. Therefore, the right of action was in the creditors and the next question arose as to whether it should be brought at law or in equity. The complainants in the *Chicago* Case, conceiving that the action was necessarily in equity, filed suits in the Federal courts of many states. These complainants also conceived that the procedure should follow the *Conway* Cases, as had been done in the *Chicago* Case, and that the procedure should be identical with that in the *Chicago* Case with one exception, to wit: that the assessment having already been made at the home of the corporation where a large class of the stockholders defended, it would be unnecessary to again make proof of the necessity for and the amount of the assessment, and that the Chicago decree could be relied upon to prove the amount of the assessment; other than this, all the procedure should be in accordance with that indicated in the *Conway* Cases. The bills having been so filed, motions to dismiss were filed by the various defendants in all of the jurisdictions and in each jurisdiction the defendants contended that the action by

the creditors should be at law and that the Federal jurisdictional amount was not involved. None of the defendants at any time contended that the assessment made in the Chicago decree was not conclusive and binding upon them. The motions filed in the New York case were first heard and the District court sustained the motions and dismissed the bill. *Brusselback* v. *Cago Corp.*, 14 Fed. Supp. 993. Appeal was taken to the Second Circuit and the lower court's decree was reversed. *Brusselback, et al.* v. *Cago Corp.*, 85 Fed. (2nd) 20 (hereafter called Cago Case). Certiorari was denied by this court October 26, 1936. (299 U. S. 586.)

In the *Cago* Case the Second Circuit cited the *Conway* Cases with approval and held:

> (a) That the statutory liability of the stockholders of a joint stock land bank is to the creditors as a body and must be enforced in equity in a representative suit in behalf of all of the creditors;
>
> (b) That the amount collected in enforcing statutory liabilities of stockholders of a joint stock land bank constitutes a trust fund to be administered by the court for the equal benefit of all creditors and that the jurisdictional amount is not determined by the amount claimed by any individual complainant or the amount due from any individual defendant, but is determined by the amount of the trust found sought to be collected.

Also, the court assumed that the Chicago decree was conclusive and binding as to the necessity for and the amount of the assessment, for the court said:

> "A suit was brought by creditors in the United States District Court, Northern District of Illinois, Eastern Division, against all the bank's stockholders to assess and enforce their liability, and a decree was entered assessing the stockholders 100 per cent of the par value of the shares of stock held by them.
>
> "It is here alleged that such decree, to the extent that it fixes the necessity for and the amount of the assessment, is effective and binding upon all stock-

holders of the bank irrespective of whether or not they were served in that proceeding."

With such pleading and with such theory the decision found no fault.

The District Court in Ohio likewise dismissed the bill in the case now here. Appeal was taken to the Sixth Circuit and that court reversed the District Court and in its opinion cited and relied upon *Brusselback* v. *Cago* and also *Brusselback* v. *Chicago Joint Stock Land Bank, supra.* Therefore, the Second Circuit and the Sixth Circuit were in entire accord in these identical cases.

However, after the *Cago* Case, but before the decision by the Sixth Circuit in the case here, the Second Circuit rendered a decision on December 7, 1936, in *Holmberg, et al.* v. *Carr, et al.*, 86 Fed. (2nd) 727 (hereafter called *Holmberg* Case) and the petitioners here, in praying for certiorari, contended that such decision was in conflict with the decision of the Sixth Circuit, here sought to be reviewed. As this court granted certiorari, it necessarily follows that it has found such a conflict.

The conflict, however, arises as to the extraterritorial effect of the Chicago decree and does not relate to any matter which was contested either in the District Court or in the Circuit Court of Appeals.

ARGUMENT.

POINT I.

THE DECREE OF THE UNITED STATES DISTRICT COURT OF THE DISTRICT WHERE THE CHICAGO JOINT STOCK LAND BANK IS LOCATED, DETERMINING THE NECESSITY FOR AND THE AMOUNT OF THE ASSESSMENT TO BE COLLECTED AGAINST THE STOCKHOLDERS OF THE CHICAGO JOINT STOCK LAND BANK, IS BINDING UPON THE STOCKHOLDERS WHEREVER LOCATED.

The petitioners' first Specification of Error is that the bill of complaint, as amended, does not state facts sufficient to constitute a good cause of action, either legal or equitable, because the bill does not allege insolvency of the Bank or the necessity for the assessment.

Paragraph 9 of the bill of complaint (R. 4) alleges that in the District Court in Chicago the Master found the Bank to be insolvent and that its liabilities exceeded the amount of its assets to the extent of approximately $12,000,000.00; that the Master found that an assessment of 100 per cent against the stockholders would be necessary, that the Court approved the Master's report and entered a decree assessing the stockholders of the Bank for an amount equal to 100 per cent of the par value of the shares held by them.

Paragraph 10 of the bill (R. 5) alleges that the decree of the United States District Court for the Northern District of Illinois is effective and binding not only upon the Illinois stockholders who were served with process in the cause, but is equally effective and binding upon all the stockholders of the Bank. There is some question as to whether the allegations in Paragraph 9 are not sufficient in themselves upon which to base proof that the Bank was insolvent and the extent of such insolvency, independent of any

aid from the Chicago decree. However, as the bill was filed upon the theory that the Chicago decree is conclusive and binding upon foreign stockholders as to the necessity for and the amount of the assessment, we argue the matter upon that basis here.

Petitioners rely entirely upon *Holmberg* v. *Carr*, 86 Fed. (2nd) 727.

In the *Holmberg* Case the plaintiffs (creditors of the Minnesota Joint Stock Land Bank) proceeded upon a theory entirely different from that adopted by the respondents in the *Cago* Case and in the case here and sought different relief. The bill of complaint in the *Holmberg* Case alleged that the Minnesota Joint Stock Land Bank had become insolvent and the creditors had brought a suit in the District Court of Minnesota; that the court had entered a decree assessing all stockholders, whether served with process or not, 100 per cent of the par value of their shares, and had appointed a receiver to collect the assessment. Thus far, the bill follows the procedure in the *Cago* Case and in the case here, but departs from it in that the prayer of the bill is not for judgments against the stockholders upon the assessments which had been fixed in the Minnesota District Court, but for the appointment by the District Court in New York of an ancillary receiver to collect from stockholders resident in that district. Carr, a defendant stockholder, filed an answer. His answer was summarily stricken as a sham and as frivolous and an ancillary receiver was appointed by the District Court. Upon review the Circuit Court of Appeals held that the District Court had no power to strike an answer upon the ground that it was a sham and frivolous and also that power was lacking in the court to appoint an ancillary receiver. Such was the extent of the decision upon the issues presented to the Circuit Court of Appeals. The court, however, went further and stated that the assessment in the Minnesota District Court had no ex-

traterritorial effect and therefore the bill should have been dismissed with leave to the plaintiffs to plead over.

Respondents assert that the language in the *Holmberg* Case to the effect that the Minnesota decree has no extra-territorial effect is not the law and rely upon the following:

Bernheimer v. *Converse,* 206 U. S. 516.
Converse v. *Hamilton,* 224 U. S. 243.
Selig v. *Hamilton,* 234 U. S. 652.
Marin v. *Augedahl,* 247 U. S. 142.
Chandler v. *Peketz,* 297 U. S. 609.
Hawkins v. *Glenn,* 131 U. S. 319.
Corrington v. *Crosby,* 210 N. W. 342; 48 A. L. R. 660.
Hall v. *Ballard,* 90 Fed. (2nd) 939.
Howarth v. *Lombard,* 175 Mass. 570, 56 N. E. 888.
Sheafe v. *Larimer,* 79 Fed. 921.
Goss v. *Carter,* 156 Fed. 746.
Smith v. *Swormstedt,* 16 How. 288; 14 L. Ed. 942.
Hartford L. Ins. Co. v. *Ibs,* 237 U. S. 662.
Equity Rule 38.

The first five of the above decisions arose under the Minnesota statute which provides for double liability upon stockholders in Minnesota corporations.

In *Hale* v. *Allinson,* 188 U. S. 56, a Minnesota corporation was adjudged insolvent by the State Court in Minnesota, and a receiver was appointed to liquidate its assets. Later corporate creditors sued the corporation and its stockholders in Minnesota to enforce the stockholders' liability created by the Minnesota statute. This action was also in the State Court of Minnesota. The court entered a decree requiring the Minnesota stockholders who had been served to pay assessments of 100 per cent. The court by its decree also appointed a receiver and directed the receiver

to bring suits in foreign jurisdictions against foreign stockholders. The Minnesota receiver then filed a bill in equity against certain Pennsylvania stockholders in the Federal Court for the Eastern District of Pennsylvania. The defendants contended, first, that the Minnesota receiver could not sue in Pennsylvania, and second, that in any event the assessment having been fixed and determined at 100 per cent, the remedy was at law. The Supreme Court sustained both points. It is important to note, however, that this court assumed that the assessment in Minnesota was conclusive and binding; otherwise there would have been no reason for holding that the action would have to be at law, for on this point the court followed *Kennedy* v. *Gibson,* 8 Wall. 498; *Casey* v. *Galli,* 94 U. S. 677; *U. S.* v. *Knox,* 102 U. S. 422.

Bernheimer v. *Converse* and *Selig* v. *Hamilton, supra,* were also decided under the Minnesota statute, but in the meantime the statute had been amended expressly to provide that an assessment against the stockholders of a Minnesota corporation made in a judicial proceeding in Minnesota is conclusive and binding upon all stockholders, whether served with process or not, and also to provide that a receiver of a Minnesota corporation appointed by a Minnesota court might sue in foreign jurisdictions to enforce the stockholders' liability. So in the above cases the receiver brought suit in foreign jurisdictions, asserted that the Minnesota assessment was binding on foreign stockholders, the receiver obtained judgments, and the judgments were affirmed by this court on appeal. It was held by this court that the foreign stockholders were bound by the Minnesota assessment as they were severally represented in the Minnesota litigation by the corporation of which they were stockholders.

Converse v. *Hamilton, Marin* v. *Augedahl,* and *Chandler*

v. *Peketz, supra,* carried the principles of the former cases even further.

In the *Marin* Case there was an assessment against stockholders in Minnesota under the Minnesota statute, and the statutory receiver was appointed to enforce assessments against nonresidents. The receiver sued the stockholders in North Dakota. The North Dakota court held that the Minnesota court was without jurisdiction as to North Dakota stockholders who had not been served, and refused to give effect to the decree of assessment. This court held that the North Dakota judgment violated the constitution in that it failed to give full faith and credit to the decree of the Minnesota court. *Converse* v. *Hamilton* and *Chandler* v. *Peketz, supra,* were to the same effect.

In the *Holmberg* Case Judge Hand refers to such cases as the above, where a state statute is involved, and attempts to distinguish them from the facts in the case before him, saying:

> "* * * the assessment can be valid extraterritorially, if at all, only because it was made by a court in the home jurisdiction of the company. It is true that when there is a local statute making such assessments conclusive, they are so extraterritorially, certainly if made by a court. *Bernheimer* v. *Converse,* 206 U. S. 516; *Howarth* v. *Lombard,* 175 Mass. 570; *King* v. *Cochran,* 76 Vt. 141, 56 A. 667; Restatement of Conflict of Laws, § 186, Comment (c)."

This statement might be sufficient if *Bernheimer* v. *Converse, supra,* could be disregarded, but Judge Hand's opinion cannot be reconciled with this court's decision in that case. There Bernheimer had purchased stock in a Minnesota corporation. Subsequently the corporation failed and a creditor obtained a judgment, and execution being returned unsatisfied, he brought suit against the corporation for the appointment of a receiver and for the enforcement of the individual liability of its stockholders. Upon the hearing the Minnesota court ordered an assessment of 36 per cent upon each share and against each and every

stockholder, whether served with process or not. The receiver was authorized to prosecute actions against all of the assessed stockholders, whether served with process in the Minnesota action or not. In the meantime, Bernheimer had died and his estate was being probated in New York. Neither Bernheimer nor his executor had been served in the proceedings in Minnesota. The receiver brought suit against the executor in the Federal District Court of New York and asserted that the assessment by the Minnesota Court was conclusive and binding on the defendant executor by reason of the Minnesota statute, which statute, as it then existed, made such finding of the Minnesota court final and conclusive as to the neeessity for and the amount of the assessment against all stockholders, whether served or not. The defendant answered, saying that there had been no such statute in existence at the time Bernheimer became a stockholder and that under the Minnesota statute, as it existed at the time Bernheimer acquired his shares, he could have been held liable only if process was personally served upon him, and that therefore neither Bernheimer nor his executor could be bound by the existing Minnesota statute which had been adopted after Bernheimer had become a stockholder. Judgment was rendered for the receiver in the New York court and the matter came before the Supreme Court of the United States. In its opinion this court propounded the following question:

> "Is there anything in the obligation of this contract which is impaired by subsequent legislation as to the remedy, enacting new means of making the liability more effectual?"

The court answered its own question by pointing out that it had been frequently held by the courts in such cases that the representation which a stockholder has by virtue of his membership in a corporation is all that he is entitled to, and that the Minnesota statute, making the assessment

conclusive and binding upon those not actually served, merely adopted a procedure which had previously been given the sanction of the courts, and that the Minnesota statute and the procedure taken in Minnesota were binding upon the defendant and violated none of his constitutional rights.

Judge Hand in the *Holmberg* Case also sought to distinguish stock subscription cases which include that line of cases decided by this court, of which *Hawkins* v. *Glenn, supra,* is outstanding, and his opinion says:

> "As for a call upon a subscription, the situation is *toto coelo* different; for in that case there is a true contract made with the company as a promisee, and enforced as the shareholder intends it to be enforced."

However, the same distinction was attempted in *Bernheimer* v. *Converse, supra,* and was repudiated by this court as follows:

> "Nor can we see any substantial difference in this respect between a liability to be ascertained for the benefit of creditors upon a stock subscription and the liability for the same purpose which is entailed by becoming a member of a corporation through the purchase of stock, whereby a contract is implied in favor of creditors."

Therefore, we submit that this court has previously repudiated the distinctions attempted by Judge Hand both as to the cases involving the Minnesota statute and the cases involving stock subscriptions.

The Federal Farm Loan Act, providing for the stockholders' liability, is by no means unique. There have been many decisions considering the terms of state statutes similar in all respects to the Act here involved. In none of these cases has the statute been so narrowly construed as was the Federal Farm Loan Act construed by the Circuit Court of Appeals for the Second Circuit in *Holmberg* v. *Carr.* A well reasoned case, where the pertinent facts are identical with

the case here, is *Corrington* v. *Crosby*, 210 N. W. 342; 48 A. L. R. 660. There the Supreme Court of North Dakota held that a judgment or order of a Montana District Court declaring a bank insolvent and levying an assessment is conclusive on stockholders in North Dakota who were not parties or served with process.

In *Howarth* v. *Lombard*, 175 Mass. 570, 56 N. E. 888 (Sup. Jud. Ct. of Mass., 1900), the Court held that the determination by the State Court of Washington, fixing the amount of an assessment against stockholders of a Washington corporation, was determinative in a subsequent action brought in the Commonwealth of Massachusetts against stockholders resident in that State who had not been made parties defendant in the Washington State proceeding on the issue of the amount of the assessment to be collected from stockholders. The Constitution of the State of Washington provided:

> "Each stockholder of any banking or insurance corporation or joint stock association shall be individually and personally liable, equitably and ratably, and not one for another, for all contracts, debts and engagements of such corporation or association accruing while they remain such stockholders, to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares."

A Washington State statute further provided as follows:

> "Each and every stockholder shall be personally liable to the creditors of the company to the amount of what remains unpaid on his subscription to the capital stock and not otherwise, provided that the stockholders of every bank incorporated under this act, or the territory of Washington, shall be held individually responsible, equitably and ratably," etc. (then following the exact language of the Constitution).

The Constitution and the statute of the State of Washington were therefore almost identical to the Federal Farm Loan Act here involved. The Supreme Judicial Court of

Massachusetts pointed out that the statute did not define the nature of the liability and contained nothing as to the means of enforcing it and that the method of enforcing it was left to be determined by the courts, and held that the decree of the Washington Court fixing the amount of the assessment was determinative of that issue in the subsequent action in Massachusetts, and that the statute did not require a separate assessment to be made in each state where the stockholders' liability is enforced. (The above case was cited with approval by this court in *Bernheimer* v. *Converse.*)

Sheafe v. *Larimer,* 79 Fed. 921 (C. C., N. D., Ia., Western District, 1897), involved the same Washington statute, and the court reached the same conclusion as the Supreme Judicial Court of Massachusetts in the *Howarth* v. *Lombard* case.

In *Goss* v. *Carter,* 156 Fed. 746 (C. C. A. 5th, 1907), the court held that a decision of a Nebraska court in determining the amount of the assessment to be levied against stockholders of a Nebraska corporation was binding in a subsequent suit brought against stockholders of the corporation residing in Texas. The Nebraska Constitution involved, set forth on page 751 of the opinion, provides as follows:

> "SECTION 7. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him held to an amount equal to his respective stock or shares so held, for all its liabilities accruing while he remains such stockholder; and all banking corporations shall publish quarterly statements under oath of their assets and liabilities.
>
> "SECTION 4. In all cases of claims against corporations and joint stock associations, the exact amount justly due shall be first ascertained, and after the corporate property shall have been exhausted the original subscribers thereof shall be individually liable to the extent of their unpaid subscription, and the liability for the unpaid subscription shall follow the stock."

Here again, the provisions of the Nebraska Constitution relating to the stockholders' liability are very similar to the provisions of the Federal Farm Loan Act. The Circuit Court of Appeals for the Fifth Circuit held that this statute did not require a separate assessment to be made in each district court where the stockholders' liability is sought to be enforced, and that the decision by the domiciliary court of the amount of the assessment is determinative of this issue in all subsequent suits to enforce the stockholders' liability.

Hall v. *Ballard,* 90 Fed. (2nd) 939, a recent decision by the Fourth Circuit, construing the National Banking Act, is also in point.

See also 80 L. Ed., 891, where the decisions passing upon the question argued under this Point are collected and digested.

THE CHICAGO DECREE IS BINDING ON ALL STOCKHOLDERS BY REASON OF EQUITY RULE 38.

Independently of the above cases, all of which dealt with stockholders' liability, we submit that the cases of *Smith* v. *Swormstedt,* 16 How. 288; 14 L. Ed. 942, and *Hartford L. Ins. Co.* v. *Ibs,* 237 U. S. 662; 59 L. Ed. 1165, the doctrine of which is embodied in Equity Rule 38, amply justified the respondents in relying upon the Chicago decree as being conclusive and binding on foreign stockholders.

Equity Rule 38 reads as follows:

> "When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

To come within that rule it is not necessary in such a proceeding that the court appoint certain of the defendants to represent the others; it is sufficient if it appears from the allegations of the bill that an adjudication is sought which will be effective not only against those who were brought

before the court as defendants, but against others similarly related to the subject of dispute. It is not necessary to aver in terms that those who are made defendants are sued as representatives of the class of which they are shown to be members. (*McClelland* v. *Rose,* 247 Fed. 721, 724.) It is necessary, however, that there be a question of common or general interest to many persons constituting a class and that it be impractical to serve all.

This is the situation which prevailed in the *Chicago* Case. All of the stockholders constituted one class. The question as to the necessity for and the amount of the assessment was common to all. It was not only impractical but impossible to bring before the court those residing outside of Illinois. If Equity Rule 38 does not apply to the *Chicago* Case, it is difficult to imagine a situation in which the rule could be invoked.

Respondents wish to make it clear that it is not alleged in the bill of complaint nor has it been contended by the respondents at any time that the Chicago decree is conclusive and binding for any purpose other than the necessity for and the amount of the assessment. Any defendant in this case is entitled to all other defenses, such as showing that he is not a stockholder, or is not the holder of as many shares as is alleged, or has a claim against the corporation which in law or in equity he is entitled to set off against the assessment, or that he has any other defenses personal to himself. (See *Selig* v. *Hamilton, supra.*)

Manifest Injustice Would Result From Different Assessments in Different Jurisdictions.

Whether the Chicago decree as to the necessity for and the extent of the assessment is binding upon the petitioners is a question pertaining exclusively to procedure and not to substantive rights. Procedure should be adjusted to serve justice. There can be no doubt that the assessment

made in the *Chicago* Case is correct and just. This assessment was first determined by a Master; it was approved by the District Court; it was upheld by the Circuit Court of Appeals; certiorari was denied by this court. What justice is to be served by taking the same documents and the same witnesses into the various states and jurisdictions where stockholders reside and making the same proof anew? If the assessment was correct in the first instance, presumably assessments in the same amount will be fixed in other jurisdictions. The only possible theory justifying an assessment anew is that it might be fixed in different amounts in different jurisdictions, but this also would result in manifest injustice. The statute upon which the liability is founded provides that the stockholders shall be "equally and ratably and not one for another" responsible for all the debts and engagements of the Bank. If assessments in different jurisdictions are fixed in different amounts, uniformity is destroyed and the stockholders are not held "equally and ratably".

Can the petitioners seriously contend that, had the District Court of Illinois in a suit to which the Chicago Joint Stock Land Bank was a party defendant and in the district where the Bank was domiciled, decreed that only 50 per cent of the stockholders' liability was necessary, it could have been asserted in the subsequent suit brought in Ohio that a 75 per cent, 85 per cent or 100 per cent assessment of the stockholders' liability could be recovered? Yet, if it is held that the decree of the domiciliary District Court of Illinois, determining the amount of the stockholders' liability, is not binding upon that issue in a subsequent suit brought in other districts to enforce this stockholders' liability, the stockholders who are defendants in a subsequent suit might well be assessed a greater amount than the stockholders who were defendants in the district where the joint

stock land bank is domiciled. Such a result does violence to the very terms of the Federal Farm Loan Act, and introduces an element of confusion which is unwarranted by the terms of the Act.

The petitioners and the *Holmberg* Case, *supra,* rely upon the following quotation from *Wheeler* v. *Greene,* 280 U. S. 49, at Page 51:

> "There is not the same need that the stockholder's liability should be summarily disposed of behind his back * * * rather than by the usual proceeding of a bill in equity which is brought in the neighborhood, in which the stockholder can be heard, and by which the assessment instead of one hundred per cent. can be adjusted to the specific case."

The above quotation, however, omits the material words, "in Washington", and has inserted in their place asterisks. By reference to the neighborhood, this Court obviously referred to the domicile of the bank in which naturally many of the stockholders would reside, as contrasted with the administrative board in Washington. It will also be noted that the language quoted speaks not of *assessments* but of an *assessment,* implying that only one assessment should be made.

Before concluding this point, we wish to call to the court's attention the status of the record in the District Court. After this case had been remanded by the Sixth Circuit to the District Court, and before petition for certiorari was presented to this court and before counsel for respondents knew that such a petition was to be presented, the respondents became concerned over the decision in the *Holmberg* Case and decided, as a precautionary measure, to amend their bill and allege the insolvency of the bank, the extent thereof, and the necessity for an assessment against the stockholders without any reference to the Chicago decree, and to make proof of such facts anew at the trial in Ohio, and tendered such an amendment to the District Court, but counsel for petitioners vigorously opposed the motion, and

contended that such an amendment would constitute a departure in the pleadings. The District Court took the motion under advisement and has not yet rendered an opinion or permitted the respondents to file the amendment. If this amendment had been filed, there would have been no ground upon which the petitioners could have sought certiorari to this court on the point here being argued. Therefore, it becomes manifest that the petitioners are not in good faith seeking to have their day in court upon the questions pertaining to the necessity for and the amount of the assessment, but are merely endeavoring by legal technicalities to evade any adjudication as to their liability to the creditors of the Bank. In view of what has occurred in the District Court since the decision by the Circuit Court of Appeals, we respectfully suggest that if this court holds the Chicago decree to have no extraterritorial effect, then it should instruct the District Court to file the amendment which has heretofore been tendered to such District Court.

It is therefore submitted (1) that the Federal Farm Loan Act does not by its terms require a separate assessment to be made in each district where a suit is brought to enforce the stockholders' liability, and (2) since the Chicago decree determining the amount of the assessment was just and correct, that decree is binding upon the stockholders wherever sued, insofar as it determines the amount of the assessment to be asserted against the stockholders.

Point II.

THE PROBATE LAWS OF THE STATE OF OHIO ARE NOT PERTINENT.

Petitioners contend in connection with their second Specification of Error that under the probate laws of Ohio no action may be brought to adjudicate a claim against an executor of the estate of a deceased person unless the

claim has first been presented to the executor within four months after his appointment. In the present case many, if not all, of the executors had been appointed more than four months before any claim arose. It would seem to be sufficient answer to the above contention to suggest that a law of any state which bars a claim before it arises is invalid under the Fourteenth Amendment.

Petitioners, however, apparently misconstrue the probate laws of Ohio, for the Supreme Court of that state has held adversely to petitioners' contention. In *State, ex rel. Fulton, Supt. of Banks,* v. *Bremer,* 130 O. S. 227, the court said (page 236):

> "There is no law of Ohio making it mandatory upon a claimant against a decedent's estate to present his claim for allowance before entering suit."

In the case of *Beach* v. *Mizner, Executor,* 131 O. S. 481, cited by petitioners, the claimant chose to present his claim to the executor, but he presented it too late, as was shown by his complaint, and therefore the complaint was held bad on demurrer. However, the statement above quoted from the *Fulton* Case was neither repudiated nor modified in this later case.

Petitioners rely upon *Pufahl, Receiver,* v. *Estate of Parks,* 81 L. Ed. 73, as holding that such local probate laws are binding upon claimants even though they bring their action in a Federal Court.

Petitioners misconceived the decision in that case. In the first place, the claimant there proceeded in the state court and, more important, the question in that case was not whether the claimant had the right to have his claim adjudicated but whether he had the right to participate in the assets of the estate and if so on what basis. In the case here the respondents are merely seeking an adjudication of their claims in the Federal Court, and this Court, in the *Pufahl* Case, discussed a similar situation and in

speaking of the right of a claimant who otherwise had the right to litigate in the Federal Court, said:

> "While he may not be denied his right to prosecute an action to judgment or a suit to final decree in the federal court, such judgment or decree can do no more than adjudicate the validity and amount of his claim. The marshalling of that claim with others, its priority, if any, in distribution, and all similar questions, are for the probate court upon presentation to it of the judgment or decree of the federal court."

Moreover, the matters under this Specification of Error do not arise on the record. There are no motions to dismiss by either administrators or executors which make any reference directly or indirectly to the Probate Laws of Ohio or any other statute of Ohio. (See motions to dismiss, R. 21-22, 40, 54, 55, 58.)

Furthermore, even though it should be conceded that the suit here would have been barred as against executors and administrators if brought in the Ohio court, or if brought at law in the Federal Court, it does not follow that the respondents would be precluded here. State statutes of limitations are not controlling in actions at equity in Federal Courts. They may be followed in the application of the doctrine of laches. (*Benedict* v. *City of New York*, 250 U. S. 321; *Hall* v. *Ballard*, 90 Fed. (2nd) 939.) But in this case no question of laches was presented to or passed upon by the District Court.

Point III.

Answer to argument of petitioners relating to specification of errors 3 to 6, inclusive.

Petitioners, in support of their Specification of Errors 3 to 6, inclusive, argue that:

1. The bill of complaint does not state facts sufficient to constitute a good cause of action in equity, because:

(a) It is a secondary suit to collect a 100 per cent assessment made by the Chicago decree, for which the remedy at law is full and adequate.
(b) There is no trust fund involved.
(c) It is not a true class suit.
(d) A class suit is unnecessary.

2. The complaint does not state sufficient facts to show the required jurisdictional amount either against those defendants holding stock of a par value less than $3,000.00, or against those holding stock of a par value greater than $3,000.00, and, furthermore, the par value of the shares is only $5.00 per share and not $100.00 per share, as alleged in the complaint.

3. The defendants are improperly joined in one cause.

4. There is a defect of parties plaintiff in that the cause of action is in the equity receiver appointed in the Chicago suit.

These contentions, which were made in the Circuit Court of Appeals and there overruled, presuppose in several instances the extraterritorial effect of the Chicago decree. In the Circuit Court of Appeals petitioners not only assumed such extraterritorial effect but asserted it and used this assertion as a foundation upon which to base several of the above contentions. Having failed there, they changed their position and denied such extraterritorial effect in order to come here. Now here, they seek to revert to their arguments below, apparently assuming that this court may decide the question upon which they came against them, and therefore seek to anticipate such a ruling and argue matters, several of which are inconsistent with the contention which brought them here.

We assume that the petitioners, having come into this court contending that the Chicago decree has no extraterritorial effect, will not be permitted to make arguments here which require them to first assume its extraterritorial validity.

However, as these arguments are contained in the peti-

tioners' brief, respondents reply to them in the same order as they are set forth above.

1. BECAUSE OF THE NATURE OF STOCKHOLDERS' LIABILITY CREATED BY THE FEDERAL FARM LOAN ACT, THE PROCEEDING TO ENFORCE SUCH LIABILITY MUST BE A REPRESENTATIVE SUIT IN EQUITY. AN ACTION AT LAW WILL NOT LIE.

(a) *The action could not be brought at law.*

The stockholders' liability sought to be enforced is created by U. S. Code, Title 12, Section 812. Under statutes of this character, which require stockholders to contribute to a special fund for the payment of corporate debts, it has long been settled that an individual creditor may not sue an individual stockholder and appropriate the entire amount of his recovery to the payment of his own debt. Statutes of this character are designed to create a fund for pro rata distribution among all creditors, and one of the creditors may not appropriate to himself what was intended for all.

Pollard v. *Bailey*, 87 U. S. 520.
Terry v. *Tubman*, 92 U. S. 156.
Hornor v. *Henning*, 93 U. S. 228.
Terry v. *Little*, 101 U. S. 216.

It necessarily follows that actions such as this must be class suits brought by one creditor for the benefit of all. The fund collected is not payable to plaintiff for his individual benefit, but must be paid to a receiver who makes pro rata distribution under the court's decree. Such a case involves the collection and distribution of a trust fund by a receiver appointed for that purpose. Such a receiver must necessarily be appointed in this case by the District Court in Ohio. Whether or not the Chicago decree is binding upon the defendants in Ohio as to the necessity for and the amount of the assessment, it is quite clear that the equity

receiver appointed in the *Chicago* Case cannot function in Ohio. Necessarily, the action must be in equity. Class suits at law are unknown. The collection and distribution of a trust fund by a judicial receiver is not appropriate in a common law action. The precise question was adjudicated in the *Conway* Cases, *supra,* page 3.

Petitioners rely for the most part upon cases decided under the National Banking Act, which hold that where the Comptroller levies an assessment of 100 per cent against stockholders, and the bank receiver sues to collect such assessment, the remedy is at law. This point was first established in *Kennedy* v. *Gibson,* 8 Wall. 498, and has never been departed from, but the method of enforcing the stockholders' liability under the National Banking Act is entirely different from the method of enforcing the same liability under the Act applicable to Joint Stock Land Banks. Under the National Banking Act the Comptroller of the Currency assesses the stockholders, and the statute expressly permits the receiver to sue to collect these assessments. In such an action by the receiver, the assessment levied by the Comptroller is conclusive. The receiver in such cases sues in his own name as plaintiff to collect the amount assessed by the Comptroller. The judgment in such an action runs to the receiver to whom the money is payable. When the judgment is collected, it is administered by the receiver under the supervision of the Comptroller. There is no class suit, no judicial receiver, and no judicial administration of the fund collected.

The Act involved here is entirely different. No administrative assessment is permitted and the statute does not authorize the statutory receiver to collect the assessment levied against the stockholders. Under the present Act the only permissible method of enforcing the stockholders' liability is by a class suit in equity filed by one or more creditors on behalf of all. (*Wheeler* v. *Greene,* 280 U. S. 49.)

The present action thus diverts from *Kennedy* v. *Gibson, supra,* in that the present action is a class suit to collect and judicially administer a fund through a judicial receiver to be appointed for that purpose. In the *Conway* Cases, to which we have referred, such cases as *Kennedy* v. *Gibson* were expressly distinguished upon this ground. (*Alsop* v. *Conway,* 188 Fed. 568, at page 575.) The *Cago* Case and *Brusselback* v. *Bank* have expressly decided that a court of equity is the proper tribunal.

(b and c) The suit is a class suit in behalf of all creditors. The amounts collected constitute a trust fund.

The petitioners say that the suit here is not a true class suit because there is no trust fund involved. The *Cago* Case and *Brusselback* v. *Bank* are to the contrary.

(d) A class suit is necessary.

The petitioners next argue that a class suit is unnecessary because under certain provisions of the Ohio Code one or more persons may sue for the benefit of a group and several judgments may be rendered, giving to each plaintiff his proportionate share of the recovery. It is quite unnecessary to consider the adequacy of these statutory remedies, as they have no possible effect upon the equity jurisdiction of the Federal Courts. This latter jurisdiction is fixed by the Federal Judiciary Act of 1789 and such jurisdiction cannot be ousted by state statutes enlarging legal remedies. The remedy at law, which prevents the exercise of equity jurisdiction in the Federal Courts, must be one which existed when the Judiciary Act of 1789 was passed. This is elementary; it is sufficient to refer to 21 C. J. 41, 42, where the authorities are cited and reviewed.

In concluding this point, we submit that if this court holds that the Chicago decree has no extraterritorial effect, then

the present case is in all respects identical with *Brusselback* v. *Bank*, and that decision should control.

On the other hand, if it is held that the Chicago decree is effective and binding as to the necessity for and the amount of the assessment, then the present case is controlled by the decision of the Second Circuit in the *Cago* Case, which held that such suit was properly brought in equity.

2. THE REQUIRED JURISDICTIONAL AMOUNT APPEARS FROM THE BILL OF COMPLAINT.

The petitioners contend, first, that as to those stockholders who own stock of a par value of less than $3,000.00, the court has no jurisdiction. The *Conway* Cases in considering a similar situation held otherwise; the *Cago* Case and *Brusselback* v. *Bank* also held otherwise. All held that the fund sought to be collected determined the jurisdictional amount, and hence the fact that the liability of certain stockholders might be less than $3,000.00 did not deprive the court of jurisdiction as to them.

Petitioners next contend that as to the stockholders who owned stock of a par value of more than $3,000.00, there is no jurisdictional amount, for as against such defendants the plaintiffs have no claim amounting to $3,000.00, and say that even if the amounts claimed from all of the defendants are aggregated, the respondents' claim is for but a fractional part of the alleged total liability and amounts to only $1,422.59. Their calculation is as follows:

The respondents held bonds for the amount of $132,000.00. The total amount of bonds issued and outstanding is $42,000,000.00. The amount sought to be recovered from Ohio stockholders in this suit is $458,900.00, and therefore 132,000/42,000,000ths of $458,900.00 amounts to $1,422.59, which sum is the total amount the respondents may recover from the Ohio stockholders.

The short answer to this contention is that the respond-

ents have a claim for $132,000.00. How much they will recover in Ohio on this claim depends upon how many creditors intervene in the suit. If few creditors intervene, they will recover the full amount of their claim. Furthermore, this same theory was asserted in the case of *Brusselback* v. *Bank*. That suit was originally brought by Brusselback alone. He had bonds of the par value of $4,000.00. The defendants there argued that the total amount to which Brusselback would be entitled in any event would be 4,000/42,000,000ths of $4,000,000.00, the latter figure being the entire extent of the stockholders' liability, and therefore that Brusselback's claim was for only $389.00, which, of course, was less than the jurisdictional amount.

The Circuit Court of Appeals did not discuss this ingenious calculation, but held that as Brusselback had bonds of $4,000.00, his claim was more than sufficient to sustain federal jurisdiction.

Petitioners additionally contend that for the purpose of testing jurisdiction the Bank's shares must be deemed to have a par value of $5.00 and not $100.00 each. The contention is patently unsound for several reasons.

The Federal Farm Loan Act provides for the organization of three distinct classes of corporations, namely, Federal Land Banks, Farm Loan Associations, and Joint Stock Land Banks. Title 12, U. S. C. A., Sec. 692, provides that the capital stock of Federal Land Banks shall be divided into shares of $5.00 each. Section 731 contains a similar provision with respect to Farm Loan Associations, but there is no similar provision in the Act respecting Joint Stock Land Banks. Had Congress intended that the capital stock of Joint Stock Land Banks should be divided into shares of $5.00 each, it would have so provided.

In fact, Congress provided the contrary. Section 811 provides that Joint Stock Land Banks shall be organized subject to the requirements and under the conditions set

forth in Sections 671 to 683. None of these sections contains anything on the subject of the par value of shares. Section 692, which requires the capital stock of Federal Land Banks to be divided into shares of $5.00 each, is not included within these sections. It is thus clear that Joint Stock Land Banks are not subject to the requirement that their shares have a par value of $5.00.

Counsel rely upon Section 813, which provides that:

> "*Except as otherwise provided,* joint stock land banks shall have the powers of, and be subject to all the restrictions and conditions imposed on Federal land banks by this chapter."

But this section does not apply, because it is "*otherwise provided*" in Section 811, which expressly says that Joint Stock Land Banks shall be organized subject to the requirements of Sections 671 to 683. In any event, Section 813 refers to the powers and duties of Joint Stock Land Banks *after they have been organized.* The conditions of their organization are specified in Section 811. Such has always been the practical interpretation of the statute by the Federal Farm Loan Board, and this interpretation was followed in *Todd* v. *Russell,* 1 Fed. Supp. 788. Counsel admit that this is the only case they have found passing on the question, and that it is directly in point against their contention, and merely suggest that the court came to a hasty conclusion. Furthermore, Section 831(a) provides that the Federal Farm Loan Board may charter Joint Stock Land Banks, and authorize them to increase their capital stock. Pursuant to this section, the Board chartered the Bank in question, and authorized such Bank to issue its shares of the par value of $100.00 each. Obviously, the shares were issued in strict conformity with the statute.

Even if the statute could be construed as specifying $5.00 shares, it could not be given the effect contended for by petitioners. The contention is that because the stat-

ute says that the capital stock shall be divided into $5.00 shares, the court must presume, for the purpose of the present assessment, that the shares in question were *actually* $5.00 shares. It is not claimed that the shares were void as violating the statute; the court is merely asked to assume that the shares were $5.00 shares. But such an assumption, if made, would be patently false. The par value of corporate shares measures the amount paid to the corporation for the shares, and equally measures the liability of the corporation to its stockholders. Here, the amount paid was $100.00 per share, and such was the liability of the Bank to its stockholders. Having received $100.00 per share, the Bank could hardly have satisfied its liability to the stockholders by the payment of $5.00 per share. The shares, *in fact*, had a par value of $100.00, and the rights and liabilities of the stockholders must be measured by that fact. Had the shares been issued as $5.00 shares, there would have been twenty times as many shares; the rights and liabilities of the stockholders would have been exactly the same. Counsel say that the Bank violated the statute in issuing $100.00 shares instead of $5.00 shares. Assume it did; the supposed offense is not particularly harmful, and certainly furnishes no sound reason why petitioners should escape 95 per cent of their statutory liability. The statute is not prohibitory in its terms, and should be construed as directory rather than mandatory.

In any event, the stockholders are estopped. They paid the corporation $100.00 per share, and accepted certificates which indicated that the shares had a par value of $100.00. Had the shares been $5.00 shares, the Bank could not have conducted business, for Section 815 requires a minimum capital of $250,000.00, and had the 40,000 shares of the Bank been $5.00 shares, the capital would have been only $200,000.00. Moreover, had the shares been $5.00 shares, most of the bonds would have been unauthorized. Section 814 pro-

vides that bonds may not be issued in excess of fifteen times the amount of a bank's capital and surplus. Had the 40,000 shares been $5.00 shares, the capital would have been $200,000.00, and the limit of the Bank's bonded indebtedness would have been $3,000,000.00. In fact, the Bank issued bonds in excess of $40,000,000.00. The bondholders had a right to rely upon the fact that the Bank had a capital of $4,000,000.00, as was generally understood. Under the circumstances, it is entirely clear that, as against the creditors who relied upon the capital stock as a fund for the payment of their debts, the stockholders who received $100.00 shares are estopped to question the par value thereof.

Casey v. *Galli,* 94 U. S. 677, 680; 24 L. Ed. 168.
Chubb v. *Upton,* 95 U. S. 665, 668; 24 L. Ed. 523.
Scott v. *Deweese,* 181 U. S. 202, 213; 45 L. Ed. 822.

Counsel rely upon certain cases which hold that an *ultra vires* contract may not be validated by estoppel. This doctrine may well be applied where a corporation performs some act which is entirely beyond its corporate powers. Here, the act performed was the issuance of shares, which the corporation had a perfect right to do. The mistake, if any, was in the manner of the performance. At most, the Bank issued a certificate for one share of the par value of $100.00, instead of twenty shares of the par value of $5.00. The act was not *ultra vires* within the meaning of the cases cited by counsel.

Finally, the court in the *Chicago* Case, which levied the assessment, found that the shares had a par value of $100.00, and assessed the stockholders for $100.00 per share, the Circuit Court of Appeals affirmed and this court denied certiorari. Respondents contend that this decree is conclusive as to the assessments on all stockholders. If such decree is not conclusive and the shares are now held to have a par value of $5.00 each, the Illinois stockholders

who have paid on the basis of $100.00 per share have certainly suffered a grave injustice.

3. THE DEFENDANTS ARE PROPERLY JOINED IN THE SUIT.

Petitioners contend that "there are 145 separate debtors who were sued together in this action as defendants with no excuse therefor save that they are all stockholders of the Chicago Bank." The "excuse" is sufficient. The same contention was made in the *Conway* Cases, and in the *Cago* Case and repudiated.

4. THERE IS NO DEFECT OF PARTIES PLAINTIFF. THE RECEIVER APPOINTED IN THE CHICAGO CASE COULD NOT BRING THE ACTION.

To sustain their sixth Specification of Error the petitioners argue that there is a defect of parties plaintiff. The contention is that the present action should have been brought by the receiver appointed by the Chicago court, but in the absence of statutory authorization it is well settled that such a receiver may not sue outside the jurisdiction of his appointment.

Booth v. *Clark,* 17 How. 322; 15 L. Ed. 164.
Hale v. *Allinson,* 188 U. S. 56.
Sterrett v. *Bank,* 248 U. S. 73.
Rockwood v. *Foshay,* 66 Fed. (2nd) 625; certiorari denied, 291 U. S. 66.

It is true that where a statute makes the receiver assignee of the rights of creditors, he may sue in a foreign jurisdiction.

Bernheimer v. *Converse,* 206 U. S. 516.
Converse v. *Hamilton,* 224 U. S. 243.

But the Federal statute in question contains no provision of this character. For this reason the Chicago decree did

not attempt to confer upon the receiver appointed there the right to sue in foreign jurisdictions. It is true that the Chicago decree authorizes the receiver to collect from foreign stockholders and to give acquittances to those making payments. This, as we have previously pointed out, merely gave to the receiver appointed in the *Chicago* Case the right to receive payments voluntarily made by foreign stockholders. The decree did not authorize such receiver to sue in foreign jurisdictions and in the absence of an enabling act such a provision would not have been valid. (See authorities above cited and also *Wheeler* v. *Greene*, 280 U. S. 49, which held that the creditors' rights against stockholders must be enforced by the creditors.)

Conclusion.

Respondents respectfully submit that the decree of the United States District Court of the district where the Chicago Joint Stock Land Bank is located, determining the necessity for and the amount of the assessment to be collected against the stockholders of the Chicago Joint Stock Land Bank, is binding upon the stockholders wherever located and that the petitioners' Specification of Errors 2 to 6, inclusive, are entirely without merit, and therefore the decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

J. Arthur Miller,
George R. Murray,
Solicitors for Respondents.

P. 1

SUPREME COURT OF THE UNITED STATES.

No. 108.—October Term, 1937.

Andrew J. Christopher, Third National Bank & Trust Co., as Executor of the Estate of George Weimer, Deceased, et al., Petitioners,
vs.
W. E. Brusselback and W. I. Bell, et al., etc.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[January 3, 1938.]

Mr. Justice Stone delivered the opinion of the Court.

Respondents, creditors of a Federal Joint Stock Land Bank located in Illinois, brought the present suit in the district court for ~~western~~ Southern Ohio to collect a 100% assessment of the statutory double liability of its shareholders, which had previously been decreed in a suit brought by respondents in the district court for northern Illinois. In the Illinois suit the bank and all its stockholders were named as parties defendant, but the present defendants, petitioners here, who are stockholders residing in Ohio, were not served with process. A motion in the district court to dismiss the present suit raised the question whether the bill of complaint, which sets up the decree of the court in the Illinois suit in which it states petitioners were not served with process, but does not allege that the bank is insolvent or show any necessity for the assessment, states a cause of action. The district court gave judgment for petitioners which the Court of Appeals for the Sixth Circuit reversed. *Brusselback* v. *Arnovitz*, 87 F. (2d) 761. We granted certiorari, — U. S. —, to resolve a conflict between the decision of the court below and that of the Court of Appeals for the Second Circuit in *Holmberg* v. *Carr*. 86 F. (2d) 727. Compare *Brusselback* v. *Cago Corporation*, 85 F. (2d) 20.

The question decisive of the case is whether petitioners are bound by the Illinois adjudication, in their absence, of the bank's insolvency, and the amount of the assessment. Section 16, Federal Farm Loan Act, July 17, 1916, c. 245, 39 Stat. 374, 12 U. S. C.

§ 812, provides, "Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

Before respondents had brought the Illinois suit this Court in *Wheeler* v. *Greene,* 280 U. S. 49, had before it the provisions of the Federal Farm Loan Act which authorize the Farm Loan Board to declare a Joint Stock Land Bank insolvent, and to place it in the hands of a receiver. Section 29, Federal Farm Loan Act, July 17, 1916, c. 245, 39 Stat. 381, 12 U. S. C. §§ 961, 963. We held that those provisions do not confer upon the Federal Farm Loan Board any power to levy an assessment on the stockholders, or give to the receiver authority to maintain suit for the enforcement of their statutory liability, or otherwise set up any machinery comparable to that of the National Banking Act for enforcing the stockholders' liability. Compare *Rankin* v. *Barton,* 199 U. S. 228, 232; *Casey* v. *Galli,* 94 U. S. 673, 681. The only means of enforcing the liability left to creditors of a Joint Stock Land Bank, as the Court pointed out in the *Wheeler* case, is an adversary suit in equity against the stockholders wherever they may be found.

The obligation which the statute imposes upon the stockholders is personal, and petitioners can be held to respond to it only by a suit maintained in a court having jurisdiction to render a judgment against them *in personam.* As the liability of the stockholders is to pay the debts of the bank to creditors "equally and ratably", judicial determination of the inability of the bank to pay its debts and the amount to be assessed against the stockholders to meet the deficiency are prerequisites to the enforcement of liability, and are essential parts of the only cause of action which the statute gives to the creditors. It is plain that in such a suit the existence and extent of insolvency are facts, the allegation and proof of which cannot be dispensed with as to any stockholder unless, as between the parties to the suit, they are matters already adjudicated.

A stockholder is so far an integral part of the corporation of which he is a member, that he may be bound and his rights foreclosed by authorized corporate action taken without his knowledge or participation. *Sanger* v. *Upton,* 91 U. S. 56, 58. The subscriber

to corporate stock, whose subscription is payable on call of the directors, as required for corporate purposes, is bound by the action of the board in making the call as he is bound by a valid decree of a court against the corporation, although made in his absence, which directs performance of the corporate duty to make the call. *Hawkins* v. *Glenn,* 131 U. S. 319, 329; *Great Western Telegraph Co.* v. *Purdy,* 162 U. S. 329, 336; cf. *Kerrison* v. *Stewart,* 93 U. S. 155. Similarly, where a procedure is authorized by statute, under which a corporation may be brought into court for determination of its insolvency and the amount to be assessed against stockholders for the payment of its debts, and the judgment is declared by statute to be binding upon them, they are deemed by virtue of their membership in the corporation to have so far subjected themselves to the prescribed procedure and its consequences as to be bound by the determination although not nominal parties to the proceeding. *Bernheimer* v. *Converse,* 206 U. S. 516; *Converse* v. *Hamilton,* 224 U. S. 243; *Selig* v. *Hamilton,* 234 U. S. 652; *Marin* v. *Augedahl,* 247 U. S. 142; *Chandler* v. *Peketz,* 297 U. S. 609.

Whether it be said that by purchasing or retaining his stock in the face of such a procedure the stockholder has consented that the corporation represent him for the purposes of the adjudication, *Bernheimer* v. *Converse, supra,* 529, 532, 533; *Marin* v. *Augedahl, supra,* 150, or more realistically that as stockholder he has voluntarily assumed a corporate relationship which is subject to the local regulatory power, in the exercise of which the procedure has been attached, as an incident, to his membership in the corporation, *Converse* v. *Hamilton, supra,* 260, in either case the procedure conforms to accepted principles, involves no want of due process, *Converse* v. *Hamilton, supra; Selig* v. *Hamilton, supra; Chandler* v. *Peketz, supra,* and at least when it ripens into a judgment is entitled to full faith and credit. *Marin* v. *Augedahl, supra.* It is enough that in every case the stockholder has assumed or retained his membership in the corporation after the warning of the statute, or of rules governing the corporation, of which he knew or had opportunity to know, that the benefits of membership carry with them the risk that the corporation may stand in judgment for him.

In the present case no such warning has been given, for no such procedure has been prescribed. The statutes have fixed only the conditions on which liability of the stockholders is to attach, leav-

ing to creditors as their only recourse the usual procedure of courts as the means of asserting the liability. There is nothing in the statute relating to the organization of Federal Land Banks and the imposition of the stockholders' liability to suggest that by virtue of their membership in the corporation the stockholders can be said to have subjected themselves to a procedure for determining in their absence the essential conditions of liability, or to have relinquished their right to contest, as in any other litigation, every step essential to its establishment. As we cannot say that petitioners' membership in the bank was conditioned upon their surrender of the benefits of a procedure which would otherwise be required, there is no basis for a court to dispense with it more than in other cases in which a personal judgment is sought.

Equity Rule 38, providing that in a class suit "one or more of a class may sue or defend for the whole", was adopted in the exercise of the authority conferred on this Court by R. S. § 913, and of its own inherent power to regulate by rules "the modes of proceeding in suits of equity." Their purpose was to prescribe the procedure in equity to be followed in cases within the jurisdiction of the federal courts and not to enlarge their jurisdiction. The omission from old Rule 48 amended and promulgated as Rule 38 in 1914, 226 U. S. 659, of the phrase " . . . the decree shall be without prejudice to the rights and claims of all absent parties" preserved unimpaired the jurisdiction of federal courts of equity in a class suit to render a decree binding upon absent defendants affecting their interest in property within the jurisdiction of the court. *Smith* v. *Swormstedt*, 16 How. 288; cf. *Hartford Life Insurance Co.* v. *Ibs*, 237 U. S. 662, 672.

In the circumstances the decree in the Illinois suit was not *res adjudicata* as to petitioners in any respect. For that reason the bill of complaint failed to state a cause of action, and the decree is

Reversed.

Mr. Justice BRANDEIS and Mr. Justice CARDOZO took no part in the consideration or decision of this case.